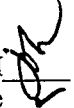









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STAFF REPORT

BOARD MEETING DATE: December 9, 2014

DATE: November 14, 2014
TO: Board of County Commissioners
FROM: John Listinsky, Director of HR/Labor Relations
328-2089, jlistinsky@washoecounty.us
THROUGH: Joey Orduna Hastings, County Manager
328-2000, jhastings@washoecounty.us
SUBJECT: Recommendation to approve updates to the Washoe County Family Medical Leave Policy (exhibit 1) to include provisions addressing new federal amendments to the Family Medical Leave Act. There is no fiscal impact associated with this action. (All Commission Districts)

SUMMARY

Recommendation to approve updates to the Washoe County Family Medical Leave Policy (exhibit 1) to include provisions addressing new federal amendments to the Family Medical Leave Act. There is no fiscal impact associated with this action.

Washoe County Strategic Objective supported by this item: Valued, engaged employee workforce.

PREVIOUS ACTION

On November 8, 2005 the Board of County Commissioners approved an Ordinance amending various provisions of Chapter 5 of the Washoe County Code to amend the method for determining the 12 month period of coverage under the Family Medical Leave Act (FMLA) and to update the Washoe County Family Medical Leave Policy to including changing the method for tracking 12 weeks of leave during any 12 month period to a rolling 12 month period measured backward from the date an employee uses any leave under this policy.

BACKGROUND

On November 17, 2008 the United States Department of Labor (DOL) published its final rule to implement the first ever amendments to the FMLA. These new regulations became effective on January 16, 2009 and address two distinct subjects: 1) the new revisions contain a number of important changes and clarifications to the original FMLA regulations regarding such issues as the definition of "serious health condition," use of paid leave, employee and employer notice obligations, and the medical certification and recertification process; and 2) they provide clarifications and additional details

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concerning the new military family leave entitlements adopted by Congress in January 2008.

Following implementation of these new amendments, the Department of Human Resources/Labor Relations put in place an FMLA addendum and a Frequently Asked Questions and Answers (FAQ) document regarding changes to the law. Approval of this board item will formally update the Washoe County Family Medical Leave Policy to reflect amendments to the FMLA.

FISCAL IMPACT

There is no fiscal impact associated with this action.

RECOMMENDATION

Recommendation to approve updates to the Washoe County Family Medical Leave Policy (exhibit 1) to include provisions addressing new federal amendments to the Family Medical Leave Act. There is no fiscal impact associated with this action.

POSSIBLE MOTION

Should the Board approve this recommendation, a possible motion would be:

“Move to approve updates to the Washoe County Family Medical Leave Policy (exhibit 1) to include provisions addressing new federal amendments to the Family Medical Leave Act.”

WASHOE COUNTY POLICY FAMILY AND MEDICAL LEAVE

Policy Statement

In accordance with the Family and Medical Leave Act (FMLA) of 1993, revised in 2009, Washoe County will provide up to 12 weeks of family and medical leave to eligible employees. The FMLA was further amended by the National Defense Authorization Act in 2010 which provides up to 26 weeks for military caregivers. The leave may be paid, unpaid, or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy. This policy is a summarization of Washoe County's and the County's employees' rights and duties under the FMLA and Code of Federal Regulations 29 C.F.R. §825.100 through §825.800 and is not meant to be an exhaustive statement of the County's or its' employees' rights and duties.

Who Does the Policy Cover?

Employees must have at least 12 months of employment with Washoe County and have worked at least 1,250 hours in the 12 months immediately preceding the leave. The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted. The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included. The employee's individual record of hours worked will be used to determine whether 1,250 hours have been worked in the 12 months prior to the commencement of FMLA leave.

Basic Leave Entitlements

- *For birth of the employee's child and to care for the newborn child after birth, or placement of a child with the employee for adoption or foster care and to care for the child.* Leave must occur within the first year after the event. If both husband and wife are employed by the County, leave is limited to a combined total of 12 workweeks during a "rolling" 12-month period measured backward from the date an employee uses any leave. Leave may be granted on a continual basis, or if the department head agrees, intermittently or on a reduced leave schedule.
- *To care for the employee's spouse, child, or parent, who has a serious health condition.* Certification of Health Care Provider is required. Leave may be granted on a continual basis, intermittent basis, or on a reduced leave schedule if medically necessary. Child includes biological, adopted, stepchild, foster child, legal ward, or a child of a person standing in loco parentis. Parent includes biological parent, or a person who stands or stood in loco parentis when the employee was a child. Parent does not include "in-laws". "Loco Parentis" is defined as a person who has/had the day-to-day responsibilities to care for and provide financial support to a child, and need not have a biological or legal relationship. If both husband and wife are employed by the County, leave to care for employee's parent is limited to a combined total of 12 workweeks during a "rolling" 12-month period measured backward from the date an employee uses any leave.

Exhibit 1

- *Where an employee has a serious health condition that makes the employee unable to perform his/her essential job functions. Certification of Health Care Provider is required. Leave may be granted on a continual basis, intermittent basis, or reduced leave schedule if medically necessary.*

Military Leave Entitlements

- *“Qualifying Exigency” arising out of a covered family member’s active duty or call to active duty in the Armed Forces. Appropriate documentation is required. Leave will be granted to an eligible employee for any qualifying emergency arising out of the fact that the employee’s spouse, son or daughter (regardless of age), or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) during deployment to a foreign country. Qualifying exigencies may include short-notice deployment, attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, rest and recuperation of covered military member, and attending post-deployment reintegration briefings. Leave duration is 12 workweeks during a “rolling” 12-month period measured backward from the date an employee uses any leave. However, two types of exigencies have shorter entitlement periods: 1) Short-notice deployment-Leave taken for this purpose can be used for a period of 7 calendar days beginning on the date a covered military member is notified of an impending call or order to active duty, and 2) Rest and Recuperation-Leave taken for this purpose can be used for a period of up to 5 days of leave for each instance. If both husband and wife are employed by the County, leave is limited to a combined total of 12 workweeks.*
- *Military Caregiver Leave. Appropriate documentation including a medical certification substantiating the employee’s need for leave will be required. In order to be eligible for this leave, an eligible employee must be the spouse, son or daughter, or parent, or next of kin of a covered service member. Eligible employees may take up to 26 weeks of leave to care for a covered service member or veteran during a “rolling” 12-month period measured backward from the date an employee uses any leave. A "covered service member" is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces), and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating. Since veterans do not have a current "office, grade, rank, or rating," the serious injury or illness must be one "that manifested itself before or after the member became a veteran." The entitlement to take military caregiver leave for the care of veterans extends only to family members of veterans when the veteran was a member of the Armed Forces at some point in the five years preceding the date on which the veteran undergoes the medical treatment or receives the therapy that necessitates the leave.*

This leave entitlement is to be applied on a per-covered-service member, per-injury basis. For that reason, an eligible employee may be entitled to take more than one period of 26

Exhibit 1

workweeks of leave if the leave is to care for different covered service members or to care for the same covered service member with a subsequent serious injury or illness. However, no more than 26 workweeks of leave may be taken within any single 12-month period. During that single 12-month period, an eligible employee may split the 26 workweeks of leave between military family leave entitlement and another FMLA-qualifying reason. However, use of FMLA leave for other reasons may not exceed more than the entitled period (12 weeks) regardless of whether the military family leave takes fewer than 14 weeks. If both husband and wife are employed by the County, leave is limited to a combined total of 26 workweeks during a “rolling” 12-month period measured backward from the date an employee uses any leave.

Definition of a Serious Health Condition

The FMLA’s definition of the term “serious health condition” is very broad and is intended to cover a variety of physical and mental conditions. A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves:

- Inpatient care (i.e. an overnight stay) in a hospital, hospice or residential medical care facility including any period of incapacity, treatment therefore, or recovery; or
- Continuing treatment by, or under the supervision of, a healthcare provider for a serious health condition which includes a period of incapacity of more than three (3) consecutive calendar days; or
- Any period of incapacity due to pregnancy or for prenatal care; or
- Any period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatments by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider; or
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
- Any period of absence to receive multiple treatments including recovery therefrom by a health care provider

Examples of a serious health condition may include, but are not limited to:

- Heart attacks or heart conditions requiring bypass surgery
- Most cancers
- Back conditions requiring extensive therapy or surgery
- Pneumonia
- Severe arthritis
- Severe nervous disorders
- Pregnancy, miscarriages, complications or illnesses related to pregnancy (e.g., severe morning sickness) and need for prenatal care
- Childbirth and recovery from childbirth
- A parent or spouse suffering from Alzheimer’s disease or clinical depression

Exhibit 1

Examples of what is not a serious health condition are short-term conditions requiring only brief treatment and recovery. Excluding serious complications, examples include:

- The common cold
- The flu, earaches, upset stomach, minor ulcers
- Headaches, other than migraines
- Routine dental or orthodontia problems and periodontal disease
- Voluntary or cosmetic treatments

Substance Abuse as a Serious Health Condition is covered under the FMLA provided that the conditions of a “serious health condition” are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee’s use of a substance, rather than for treatment, does not qualify for FMLA leave.

Definition of a Health Care Provider

- Doctor of medicine or osteopathy that is authorized to practice medicine or surgery
- Other health care providers include:
 - Podiatrist
 - Dentist
 - Clinical Psychologist
 - Clinical Social Worker
 - Optometrist
 - Chiropractors authorized to practice
 - Nurse practitioner
 - Nurse midwife
 - Christian Science practitioner as provided for in 29 CFR 825.118
 - Any provider covered under employer group health plans
 - A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law

Application Process

In all cases, an employee must complete an “Application for Family and Medical Leave” and return it to their Department HR Representative. The completed application must state the reason for the leave, the duration of the leave, the Certification of Health Care provider (if required), and the starting and ending dates of the leave.

In the event the leave is an emergency and the employee is not able to meet personally with the Department HR Representative, the information may be gathered via telephone or email, and the forms will be mailed to the employee or their representative.

Notice By Employee

The employee will be required to provide at least 30 days advance notice when the leave is “foreseeable”, or as soon as practicable if the leave was unforeseeable. A reasonable effort should be made to schedule leave so as to not unduly disrupt the department’s operations. In all situations, the employee must complete the County’s “Application for Family and Medical Leave” prior to starting the leave period. However, emergency FMLA leave may be approved based on informal communication with the department head and the required documentation may be completed after the FMLA leave begins.

The employee must comply with the usual and customary notice provisions for leave in place at each department, except the notice timing need not be longer than 30 days unless related to qualifying exigency leave. So, for example, if employees must call their supervisor about any other absence, they can be required to do so for an FMLA-based absence. All employees requesting a leave extension should do so in writing, if possible, two weeks prior to the end of their scheduled leave. Failure to comply with these notice requirements will be grounds for, and may result in, deferral or denial of the requested leave until the employee complies with these requirements.

Eligibility Notice/Rights and Responsibilities

Washoe County will provide employees FMLA leave with a notice of their eligibility for the leave or a reason why they are not eligible within five business days of a request for leave. At the same time, employees will be provided with a statement of their Rights and Responsibilities, which is part of the Eligibility Notice.

Certification

Certification is required for any application for leave based on a serious health condition of the employee, a serious health condition of the employee’s spouse, child or parent, or a serious injury or illness of a covered service member. The Certification in most cases is to be completed by the applicable health care provider. For a qualifying exigency leave, active duty orders will be required accompanied by a statement or description of the appropriate facts regarding the leave.

The “Certification” and the “Application for Family and Medical Leave” must be submitted to the department HR representative at least 15 days after the employee is notified of this requirement, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

If requested by the County, the employee will obtain a second or third opinion from a physician, selected by and paid for by the County, and a fitness for duty report to return to work. If a third opinion is required, a physician will be selected by mutual agreement between the County and the employee, with expenses paid by the County. Second and third opinions are not permitted for recertification, a release to return to work (fitness-for-duty certification) or certification regarding care for a covered service member.

Exhibit 1

Failure to comply with the above requests by the County may result in a delay in the granting of or a denial of the request for FMLA leave and/or in termination of the employee.

Designation Notice

Within five business days (absent extenuating circumstances) of having enough information to determine whether the requested leave is FMLA-eligible, Washoe County will provide a Designation Notice, informing the employee whether or not leave is designated FMLA leave and the amount of leave that will be designated, if known. This designation may be retroactive.

In the sole discretion of Washoe County any leave that qualifies as FMLA leave may be designated as FMLA leave, regardless of whether all possible obligations are met. For example, Washoe County may designate a leave as FMLA leave without requiring a complete Medical Certification Form or a consultation with a health care provider.

Intermittent Leave or Reduced Leave Schedule

In some circumstances, FMLA leave may be taken on an intermittent or reduced leave schedule (part-time or reduced hours) basis; this might include working a reduced number of hours per day, or days per week. Intermittent leave is contingent upon medical necessity and employer approval.

- *For Birth or Adoption:* FMLA permits an employee taking leave for birth or because of placement for adoption or foster care to take leave intermittently or by working a reduced workweek. **This requires approval by the County.**
- *For Medical Necessity:* Intermittent leave to care for a seriously ill family member, to care for a covered service member with a serious injury or illness, or because of the employee's own serious health condition may be taken whenever "medically necessary". The County may place the employee in an alternative position, which better accommodates intermittent leave. **This will require a "Certification".**

Health Benefits

During any period of unpaid FMLA leave, Washoe County will maintain the employee's health coverage under the "group health plan" for the duration of FMLA leave on the same terms as if the employee was at work. If paid leave is substituted for unpaid FMLA leave, the employee's share of premiums will be deducted from the employee's paycheck.

Exhibit 1

The employee must continue to pay the employee's share of the premium for dependent coverage, when applicable, which will be billed each pay period by Health Benefits. Failure to pay the premium within the requested period will result in termination of dependent coverage. The employee will have the option to reinstate dependent coverage upon return to full time employment with no waiting period or qualification requirements.

If the employee fails to return to work after taking FMLA leave **for reasons other than** the continuation, recurrence, or onset of a serious health condition that would qualify for a FMLA leave, or other circumstances beyond the employee's control, **the employee is responsible to repay the County for the premiums paid for health coverage during the FMLA leave.** Premium cost will be automatically deducted from the final paycheck, sick leave or vacation payout, if and to the extent permitted by law, or the County may institute legal action to recover such costs.

Job Protection

Washoe County will restore the employee to his/her original or an equivalent position with equivalent pay, benefits, and other employment terms upon return from FMLA leave.

When an employee is on unpaid leave, they will not accrue vacation or sick leave. For unpaid leave over 30 days, the employee will have an adjusted anniversary and career incentive date.

Compensation During Leave

The employee will be required to use all but ten days of any accrued annual, compensatory time, sick or personal leave, in lieu of unpaid leave time for any FMLA-qualifying purpose. Sick leave may be used to care for a seriously ill family member as defined by FMLA, for the employee's own serious health condition, or for a seriously ill or injured covered service member contingent upon the circumstances meeting the requirements for use of sick leave under either County code or the terms of an applicable collective bargaining agreement.

A workers' compensation absence and an employee's FMLA leave entitlement will run concurrently when the employee's on the job injury or occupational illness meets the definition of a serious health condition as defined by the FMLA.

Tracking

An employee is eligible to take up to 12 weeks of leave under this policy during any 12-month period. Washoe County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, Washoe County will compute the amount of leave the employee has taken under this policy and subtract it from the 12 weeks of available

Exhibit 1

leave, and the balance remaining is the amount the employee is entitled to take at that time.

Eligible employees taking leave under the military caregiver provision may take up to 26 weeks of leave to care for a covered service member or veteran during a “rolling” 12-month period measured backward from the date an employee uses any leave.

Recertification

Washoe County may request recertification of a serious health condition every 30 days or more frequently if circumstances described by the previous certification(s) have changed significantly (for example, a change in the duration or frequency of absences, the severity of the conditions, other complications), an employee requests an extension of leave, or the County receives information which casts doubt upon the employee’s stated reason for the absence.

Return to Work

When FMLA leave is granted for the employee’s own health condition, the employee may be required to provide a Physician’s Release and/or Fitness for Duty Certification on the appropriate County form before returning to work. Should the return to work date be sooner than anticipated, the employee is required to notify their supervisor at least **two (2) work days** prior to the date he/she intends to report to work.

Privacy of Medical Information

Records and documents relating to medical certifications, recertifications or medical histories of employees or employees’ family members will be maintained by the Human Resources Department as confidential medical records in separate files/records from the employee’s personnel file. The information may be accessed by the following persons:

- Supervisors and managers may be informed of necessary restrictions on the work or duties of an employee and necessary accommodations;
- First aid and safety personnel may be informed, when appropriate, if an employee’s physical or medical condition might require emergency treatment; and
- Government officials investigating compliance with the FMLA shall be provided relevant information on request.